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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Saturn Corporation

MUR 5173

2002-SEP-9-A 9 15

SENSITIVE

GENERAL COUNSEL'S REPORT #8

I. ACTIONS RECOMMENDED

Take no further action against Saturn Corporation, close the file in this matter and approve the appropriate letters.

II. BACKGROUND

On February 13, 2001, the Commission found reason to believe that Saturn Corporation ("Saturn")¹ violated 2 U.S.C. § 441b(a) by making prohibited contributions in the form of forgiveness of debts owed by the Republicans for Choice Political Action Committee ("RFC" or the "Committee"). Saturn responded to the Commission's reason to believe findings on March 14, 2001 and denied forgiving any debt owed by RFC. Based on Saturn's response, this Office requested additional documents, and staff of this Office visited Saturn's offices to review and copy relevant documents. This Office has reviewed these documents and the responses by Saturn and RFC, and recommends that the Commission take no further action against Saturn.

III. ANALYSIS

Initially, the audit review of RFC's debts and obligations indicated that Saturn may have forgiven a portion of RFC's debts because RFC's amended 1996 disclosure reports filed in 1999 stated that \$40,910.58 of its debt to Saturn had been "Adjusted by Vendor." It now appears that the Committee erroneously reported this adjustment. Moreover, the evidence provided by Saturn

¹ Saturn is a Maryland corporation, which provided computer services to RFC until 1997.

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1 reveals that it did not forgive the Committee's debts and, indeed, made efforts to collect them.
2 Despite Saturn's collection efforts, RFC still owes approximately \$30,000 to Saturn.² After
3 considering the information obtained from Saturn and RFC, this Office recommends that the
4 Commission take no further action against Saturn.

5 The Committee's responses indicated that it erroneously reported adjustments by Saturn
6 on its 1999 amendments. RFC explained that the annotation "Adjusted by Vendor" was placed
7 on the 1999 amendments "in error" by Huckaby, Davis & Associates ("Huckaby"), an accounting
8 firm. RFC Response (April 18, 2001) at 4. According to RFC, "in fact no adjustments were
9 made by" Saturn "and there has been no forgiveness of debt by" Saturn. Letter from J. Curtis
10 Herge (April 6, 2001) at 2. RFC stated that "no adjustments in the debts" owed to Saturn "were
11 made or agreed to" by Saturn or RFC. RFC Response (April 18, 2001) at 4. According to Lisa
12 Lisker of Huckaby, her firm advised RFC in the preparation of the 1999 amendments:

13 In preparing the Debts and Obligations Schedules, we recommended that
14 RFC use the ending balances from the year-end 1994 FEC report. The numbers
15 on the year-end 1994 report could not be confirmed from records maintained by
16 RFC. Then, using information compiled by RFC staff (from existing files as well
17 as through vendor contacts), we arrived at ending balances for each vendor for
18 1995 and 1996. RFC then figured the appropriate amounts for the "Amount
19 Incurred this Period" and "Amount Paid this Period" columns of the Schedules D.

20
21 In some cases, the "Amount Incurred this Period" resulted in a negative
22 number. These were noted as being "Adjusted by Vendor." This notation was
23 never meant to indicate any type of debt settlement with the vendors. It simply
24 meant that ending balances due each vendor had been confirmed to the best of our
25 abilities, based on RFC's records and on information provided by vendors.
26

² RFC's amended 2001 Year End Report, filed on June 18, 2002, disclosed a debt owed to Saturn of \$28,203.38. Saturn's response to the reason to believe notification stated that the balance RFC owed to Saturn as of March 14, 2001 was \$30,869.42. Attachment 1 at 1. Although RFC staff told Audit staff during fieldwork that it had a disputed debt of approximately \$30,000 with Saturn, RFC's disclosure reports did not state that the debt was disputed.

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1 Letter from J. Curtis Herge (May 17, 2001) at 4 (Lisa Lisker Statement).

2 Saturn's response to the reason to believe notification denied forgiving any debt owed by
3 RFC and disagreed with the amounts reported in RFC's amended 1995 and 1996 disclosure
4 reports filed in 1999. Attachment 1 at 1. Specifically, Saturn disagreed that it adjusted RFC's
5 debt by \$40,910.58, denied that RFC owed Saturn \$96,493.50 at the beginning of 1996, and
6 maintained that "[a]t no time was the amount owed to Saturn by RFC ever as high as
7 \$96,493.50." *Id.*

8 Documents from Saturn's files such as correspondence and telephone logs indicate that
9 Saturn made efforts to obtain payment from RFC on its outstanding debts by sending written
10 communications and making telephone calls requesting payment, negotiating payment
11 agreements, and putting occasional holds on RFC's credit.³ See 11 C.F.R. § 116.4(d)(3). For
12 example, a letter from Saturn to the Committee dated November 15, 1995 noted the Committee's
13 unpaid balance of \$39,190.66, stated that "[d]ue to the age of the outstanding invoices, Saturn
14 needs a signed payment agreement" and enclosed a proposed agreement providing for payments
15 of \$1,625 per week for 24 weeks on RFC's balance. Attachment 1 at 6-13. In a memorandum
16 dated December 6, 1995, Debbie Eversole of RFC stated that she and Ann Stone, RFC's
17 treasurer, agreed "it is unfair for Saturn to continue to work for RFC without receiving payments
18 which not only cover current charges" but also pay the "old debt;" however, RFC was in a "very

³ In November 1994, Saturn negotiated a list rental and payment agreement because RFC "had past due accounts receivable for a few years now." Attachment 1 at 4. In the letter agreement, dated November 11, 1994, the Committee agreed to pay all invoices billed after October 15, 1994 within 60 days and to let Saturn rent two donor lists until Saturn had received "sufficient income to pay off the \$33,000.00 accounts receivable balance." *Id.* Saturn agreed to "release RFC jobs on credit hold as soon as this agreement is signed." *Id.* at 5. On September 1, 1995, Saturn proposed that RFC send a check for 25% of the \$38,165.28 past due balance to "insure your current orders are not delayed." Attachment 3 at 1. Notes of subsequent telephone contacts indicate that Saturn staff told RFC they would hold its order until Saturn received a check for \$5,000. Attachment 4.

1 delicate financial situation" with "little disposable income" and was attempting to "establish
2 small monthly payments to vendors on old debt." Attachment 1 at 15. She proposed that RFC
3 pay current Saturn bills within 10 days of receipt and pay \$200 a month on the old debt. *Id.*
4 After further negotiations, RFC agreed on December 12, 1995 to pay \$400 a month on the old
5 debt.⁴ *Id.* at 17. An internal Saturn memorandum indicated that RFC was complying with this
6 agreement in the first quarter of 1996, *see id.* at 19; nevertheless, Saturn apparently sought larger
7 monthly payments in mid-1996. In a memorandum dated August 2, 1996, Ms. Eversole stated
8 that she agreed with Saturn's request to raise the monthly payment, but could only agree to pay
9 \$1,000 a month. *Id.* at 20-21. Saturn's response, dated August 5, 1996, states that it
10 "appreciate[s] your increasing your payment to \$1,000 per month on your old debt to Saturn" and
11 "paying all current billings within 30 days;" however, the Committee "need[s] to address paying
12 us a little faster" because the current plan would take "over three years until the old debt with
13 Saturn is paid." *Id.* at 22. Finally, a letter from Saturn to the Committee dated March 14, 2001
14 enclosed an accounts receivable statement listing invoices between 1993 and 1997 and stated that
15 the Committee owed Saturn \$30,869.42 and Saturn wanted "to work out a payment plan with you
16 to payoff this very old debt." *Id.* at 23-28.

17 Monthly statements Saturn sent to the Committee do not reflect any large adjustments and
18 indicate balances owed by RFC of between \$34,640.67 and \$41,896.03 in 1995 and 1996, far
19 less than the \$96,493.50 reported by the Committee on its 1996 amendment filed in 1999.⁵ *See*

⁴ The cover page to the facsimile transmission of this agreement states that Saturn had agreed "to release our FEC report upon receipt of this fax." *Id.* at 16.

⁵ Saturn's contention that it did not forgive RFC's debt is also supported by differences between RFC's amended 1995 and 1996 disclosure reports filed in 1999, and its subsequent amended reports for 1995 and 1996 filed in 2001. RFC's 1999 amendments stated that the amount of debt RFC owed to Saturn was "Adjusted by

Attachment 2. These amounts are similar to RFC's accounts payable schedules, which list 150 Saturn invoices between 1992 and 1994, with a payable amount of \$34,969.71 as of December 23, 1994, and which list 156 Saturn invoices dated between 1992 and 1995, with a payable amount of \$32,703.38 as of January 1, 1997.

Although Saturn does not appear to have made a contribution by forgiving RFC's debt, RFC owed outstanding debts to Saturn for a number of years in excess of \$30,000 and still owes Saturn more than \$28,000. Saturn made efforts to collect RFC's debts but continued to provide services to RFC until 1997, only requiring that RFC pay promptly for current charges. There is no evidence that this extension of credit is outside the ordinary course of Saturn's business practices,⁶ but there is a large amount of debt still outstanding. Therefore, this Office is recommending no further action rather than a finding of no probable cause to believe that Saturn violated 2 U.S.C. § 441(b).

IV. RECOMMENDATIONS


1. Take no further action against Saturn Corporation;
2. Close the file in MUR 5173; and


Vendor" by \$40,910.58. The 1999 amendments also disclosed that the balance RFC owed to Saturn at the beginning of 1995 was \$15,902.04; the balance owed at the beginning of 1996 was \$96,493.50; Saturn made an adjustment of \$40,910.58; RFC paid Saturn \$20,537.38; and the closing 1996 balance was \$35,045.54. In contrast, the 2001 amendments do not state that the debts owed to Saturn were "Adjusted by Vendor" and the figures have changed significantly. The amount listed as incurred in 1995 changed from \$93,478.46 to \$52,567.88; the outstanding balance at the end of 1995 and the beginning of 1996 changed from \$96,493.50 to \$55,582.92; and the amount incurred in 1996 changed from "(40,910.58) Adjusted by Vendor" to \$0.00.

⁶ The Commission found reason to believe that Saturn violated 2 U.S.C. § 441(b)(a) by making prohibited contributions in the form of forgiveness of debts owed by RFC. Thus, the case against Saturn was framed as a debt forgiveness issue rather than as a contribution resulting from an extension of credit outside the ordinary course of business. Nevertheless, evidence obtained during the investigation suggests that the extension of credit was in the ordinary course of business. The evidence indicated that: Saturn extended credit to RFC on similar terms as to other customers; many other customers owed balances of \$30,000 or more; some customers owed Saturn for lengthy periods of time; and Saturn undertook similar collection efforts and payment plans for such customers.


3. Approve the appropriate letters.

9/6/12
Date


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